



**Tom Ojienda & Associates v County Government of Nairobi (Environment & Land
Miscellaneous Case E091 of 2021) [2024] KEELC 3951 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3951 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E091 OF 2021**

EK WABWOTO, J

APRIL 30, 2024

BETWEEN

PROF TOM OJIENDA & ASSOCIATES APPLICANT

AND

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. By a Notice of motion dated 5th December 2023, brought under Section 51(2) of the [Advocates Act](#), the Applicant sought the following orders:
 - i. That the Honourable Court be pleased to enter judgment for the Applicant against the Respondent for the sum of Kshs. 590,249.76/= (Kenya Shillings Five Hundred and Ninety Thousand, Two Hundred and Forty-Nine Shillings and Seventy-six cents only) as appears on the Certificate of Taxation dated 17th November 2023 together with interest from the date of filing the Advocate-Client bill of costs that is from 5th May 2021 until payment in full.
 - ii. That the Applicant be allowed to execute the judgement herein against the Respondent, the Nairobi City County herein.
 - iii. That the costs of this Application be provided for.
2. The application was accompanied by a Supporting affidavit sworn by Prof, Tom Ojienda, SC outlining the following grounds:
 - a. THAT the Applicant represented the Respondent in ELC No 685 of 2011; Beatrice Muchui & 2 others versus Hutchison Reriani, City Council of Nairobi & Commissioner of Lands



- b. THAT the Applicant filed an advocate-client bill of costs dated 27th April 2021 seeking Ksh 661,572.80/= as legal fees due and owing to it by the Respondent in ELC Case No 685 of 2011 where the Respondent failed to pay the Applicant for legal services rendered.
 - c. THAT pursuant to a ruling delivered on 1st December 2021, the Advocate – Client Bill of costs was taxed at Kshs 590,249.76/=
 - d. THAT the Taxing officer also issued a Certificate of Taxation dated 17th November 2023 in favour of the Applicant against the Respondent for the sum of Kshs 590,249.76/= in respect of the ruling delivered on 1st December 2021.
 - e. THAT the Client/Respondent was well aware of the existence of the bill of costs, having been served with the same and invited severally to attend Court. Further, the Respondent was represented by the firm of Rene & Hans LLP who entered appearance on 12th May 2021.
 - f. THAT the Certificate of Taxation has not been set aside or altered by any Court of competent jurisdiction and there is therefore no reason why the Court should not enter judgement against the Respondent.
 - g. THAT there were no outstanding issues left for determination herein, and it is therefore fair, just and equitable that this Application be granted in the interest of justice.
3. On 12th February 2024, the Court directed that the application be canvassed by way of written submissions. The parties were granted time lines to file and exchange their written submissions
 4. The Applicant filed submissions and a further affidavit both dated 28th February 2024. The case of Gichuki Kingar'a & Company Advocates vs Mugoya Construction & Engineering Limited [2015] eKLR was relied upon to prove that the three key requirements under Section 51(2) *Advocates Act* had been satisfied;
 - a. There is a certificate of taxation issued by the taxing officer
 - b. The certificate of taxation has not been set aside or altered by the Court and;
 - c. That there is dispute on the retainer.
 5. The Applicant further relied on the cases involving A.M. Kimani & Company Advocates vs Kenindia Assurance Company Ltd (2006) and Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR to further the assertions that where the certificate of taxation has not been altered, the certificate is final as to the amounts of costs. Furthermore, it was submitted that in so far as the Respondent did not provide the court with any proof that the certificate of costs was set aside, then the court would be persuaded by the Applicant's submissions and consequently enter judgement as prescribed under Section 51(2) of the *Advocates Act*.
 6. The court notes that the Applicant's further affidavit dated 28th February 2024 was filed without leave of the Court and the same has not been considered by the Court in its ruling since the Respondent has not had a chance to respond to the same.



7. With regards to the issue of costs and interest, it was submitted that the Court should take into consideration the trouble the Applicant went through to recover the sums due and such costs with interest as prayed was fairly due.
8. Having considered the application, its supporting affidavit and the written submissions filed, this Court is of the view that the only issue for determination herein is whether the application seeking entry of judgment is merited.
9. This Court is undoubtedly guided by Section 51 (2) of the *Advocates Act* which provides that:

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”
10. In this matter, I have reviewed the Taxing Master’s ruling in which both parties put in submissions which were considered together with the court record. There was no objection to the application. The certificate of taxation and the Taxing Master’s ruling have not been disputed and as such this court will therefore enter judgment against the Respondent.
11. The issue of costs is ultimately within the courts discretion. In this instance, I have considered that the suit originates from a 2011 matter and it would be in the interest of justice for litigation to come to an end. In view of the foregoing, I hereby find that the Notice of Motion application dated 5th December 2023 is merited and the same is hereby allowed in the following terms:
 - a. Judgment is hereby entered in favour of the Applicant against the Respondent for the sum of Kshs. 590,249.76/= (Kenya Shillings Five Hundred and Ninety Thousand, Two Hundred and Forty-Nine Shillings and Seventy-six cents only) as appears on the Certificate of Taxation dated 17th November 2023.
 - b. The claim for interest is declined.
 - c. Each party to bear its own costs of the application.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Misando h/b for Prof. Ojienda S.C for the Advocate/Applicant

N/A for the Client/Respondent

Court Assistant; Caroline Nafuna.

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